

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

FAO.No. 179 of 2014 ()

I.A.NOS.362/13 AND 363/13 IN O.S.21/11 OF THE SUB COURT, THIRUVALLA
DATED 22.02.2014

APPELLANT/PETITIONER/IST DEFENDANT:

MATHEW VARGHESE AGED 64 YEARS
S/O MATHAI VARGHESE, PARAYIL VEEDU, MANJADI P.O.
KUTTAPPUZHA, NOW RESIDING AT PARAYIL VEEDU
KODUNGALLOOR P.O., AYARKUNNAM VILLAGE.

BY ADVS.SRI.ABRAHAM MATHEW (VETTOOR)
SRI.SRI.ANIL ABEY JOSE

RESPONDENTS/RESPONDENTS/PLAINTIFF AND 2ND DEFENDANT:

1. CANARA BANK
THIRUVALLA BRANCH, REPRESENTED BY SENIOR MANAGER.
PIN - 689101

2. T.R.SREEKANTH
S/O M.K.RAVI, THIRVAMBADY VADAKKETHIL
KAVUMBHAGOM P.O., KAVUMBHAGOM VILLAGE
THIRUVALLA TALUK-689102

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
15-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

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F.A.O.No.179 of 2014

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Dated this the 15th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

Service complete.

2. Heard.

3. This appeal is against an order by which the court below dismissed an application to condone the delay in applying to set aside an ex parte money decree passed in a suit filed by a bank. The consequential order refusing to set aside the ex parte decree is also under challenge.

4. We have heard Adv.Sri.Anil Abey Jose on behalf of the appellant. He has taken us through all the relevant materials. We have also seen the material particulars and medical certificates which show that the appellant, who is a retired Professor, was sick and affected with Cancer from atleast sometime in July 2011. It had affected his health and he was undergoing radiotherapy. The plea raised by the appellant in defence to the suit was that the bank had not given due credit to the remittances made by him. He was thus contesting the suit on merits.

5. We have also seen that the appellant had to undergo radiation therapy in the Carithas Hospital, Kottayam and was under treatment of Regional Cancer Centre, Thiruvananthapuram. He developed challenge to eye site and was treated in Aravind Hospital, Theni. On the whole, we are satisfied that this is abundantly a fit case where a senior citizen has not been given an opportunity for a fair and complete trial. It is also advisable for the respondents to consider the meaningful settlement of the loan account of the appellant.

6. In the result, the impugned orders are set aside. Resultantly, the ex parte decree in O.S.No.21 of 2011 of the Sub Court, Thiruvalla is also set aside. Parties are directed to mark appearance before the court below on July 30th, 2015. Trial court will make an endeavour to persuade the parties to take recourse to mediation or other mode of settlement to ensure an out of court settlement.

This appeal is allowed accordingly.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

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